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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,096	07/31/2001	Kevin P. Headings	108.0009-00000	6782
22882 7590 04/19/2007 MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			EXAMINER VAN HANDEL, MICHAEL P	
			ART UNIT	PAPER NUMBER
			2623	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/19/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	09/921,096		HEADINGS ET AL.	
	Examiner		Art Unit	
	Michael Van Handel		2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 23 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/23/2007 has been entered.

Response to Amendment

1. This action is responsive to an Amendment filed 1/23/2007. Claims **1-39** are pending. Claims **1-3, 8-10, 15, 16, 22, 23, and 29** are amended.

Response to Arguments

1. Applicant's arguments regarding claims **1, 8, 15, 22, and 29**, filed 1/23/2007, have been fully considered, but they are not persuasive.

Regarding claims **1, 8, 15, 22, and 29**, the applicant argues that Payton fails to teach or suggest a plurality of media assets and associated metadata combined into groupings based on at least one common criteria of the media assets, and where the groupings are aggregated into at least one rollout for presentation to at least one group of consumers selected based on at least one common criteria of the consumers. The examiner respectfully disagrees. Payton discloses a virtual on-demand digital delivery system 22 that includes a central distribution server 24, a high

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bandwidth digital transport system 26, a local server 28, and a low bandwidth back channel 30 (col. 4, l. 45-49 & fig. 2). The central distribution server 24 includes a digital repository 34 for storing all of the digital items 36 that will be made available to subscribers, including videos, audio selections, and computer applications (col. 4, l. 55-58).

Payton further discloses a subscriber database 38 that stores a subscriber profile 40 for each of the subscribers. The subscriber profile includes a rating vector in which the subscriber has rated each of the items he or she has previously requested. The subscriber profile 40 also includes demographic information about the subscriber, such as the subscriber's general likes and dislikes. A collaborative filtering system 42 synthesizes the subscriber profiles 40, predicts which of the available items 36 each subscriber may be interested in or may request, and produces a list 44 of those recommended items for each subscriber (col. 5, l. 6-20). Since all of these items have criteria in common in that they are all recommended for a given subscriber, the examiner interprets these items as being "combined into groupings based on at least one common criteria of the media assets," as currently claimed. Payton still further discloses that a scheduling processor 46 merges the lists 44 of recommended items to prioritize the items 36 from the most to the least frequently recommended and places identifiers for these items in a refresh queue 47 for broadcast over the digital transport system 47. When the recommended items reach the top of the refresh queue 47, they are retrieved from repository 34 and are broadcast to the local users (col. 5, l. 21-28). This meets the limitation of "the groupings are aggregated into at least one rollout for presentation," as currently claimed. Since each of the users receiving the items have criteria in common in that they are all subscribers of the system, the examiner interprets the broadcast items in the queue as being rolled out to "at least one group of consumers selected

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based on at least one common criteria of the consumers,” as currently claimed. Payton also discloses that each local server of each subscriber could also be a video server 176 that serves a plurality of local subscribers, and that the subscriber profile sent to the central server and the list of recommended items sent to the video server 176 may represent the collective interests of all the subscribers served by that particular video server (col. 9, l. 62-67; col. 10, l. 1-16; & Fig. 8). Since these subscribers have criteria in common in that a particular video server services them all, this also meets the limitation of the “at least one group of consumers selected based on at least one common criteria of the consumers,” as currently claimed. Thus, the examiner maintains that Payton meets the limitation of “the video content including a plurality of media assets and associated metadata combined into groupings based on at least one common criteria of the media assets, the sending processor operable to aggregate the groupings into at least one rollout for presentation to at least one group of consumers selected based on at least one common criteria of the consumers,” as currently claimed.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6-11, 13-18, 20-25, 27-33, 35, 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Payton.

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Referring to claims 1, 8, 15, 22, and 29, Payton discloses a system/method for distributing digital video content, the system comprising:

- a sending processor 24 operable to distribute video content over a network to at least one storage location, the video content including a plurality of media assets and associated metadata combined into groupings based on at least one common criteria of the media assets (col. 4, l. 45-49, 55-58; col. 5, l. 6-28, 55-57; col. 6, l. 1-11; col. 8, l. 38-67; & Figs. 2, 6), the sending processor operable to aggregate the groupings into at least one rollout for presentation to at least one group of consumers selected based on at least one common criteria of the consumers (col. 5, l. 22-28; col. 9, l. 62-67; col. 10, l. 1-16; & Fig. 8); and
- a receiving processor 176 at each storage location operable to receive the video content from said sending processor and refresh a content database 56 (local storage) based on the video content received (col. 6, l. 1-7), said content database adapted to provide the at least one group of consumers access to the video content stored therein for a predetermined interval of time having a programmed begin date and a programmed end date (Payton discloses a list that determines which items will be added to or deleted from the local storage and that the list of recommended items is updated periodically)(col. 3, l. 15-17; col. 6, l. 1-9, 63-67; col. 7, l. 1-12, 61-67; col. 8, l. 1-10, 26-36; col. 9, l. 62-67; & col. 10, l. 1-16).

Referring to claims 2, 9, and 16, Payton discloses the system of claims 1, 8, and 15, respectively, wherein said receiving processor is operable to refresh said content database based

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on the at least one common criteria of the consumers (col. 8, l. 50-67; col. 9, l. 1-13; & Figs. 6, 7a, 7b).

Referring to claims 3, 4, 10, 11, 17, 18, 23-25, 32-33, and 37, Payton discloses the systems/methods of claims 2, 3, 9, 10, 16, 22, 23, and 29, respectively, wherein the at least one common criteria of the consumers includes the content usage by the consumers, and wherein the content usage includes the viewing and listening habits of each consumer (col. 4, l. 57-58 & col. 8, l. 38-49).

Referring to claims 6, 7, 13, 14, 20, 21, 27, and 28, Payton discloses the systems of claims 1, 6, 9, 13, 15, 20, 22, and 27, respectively, wherein said receiving processor is operable to refresh said content database based on one or more contractual obligations associated with the content, and wherein one of the contractual obligations includes a price charged for media content access (col. 7, l. 65-67 & col. 8, l. 1-5).

Referring to claim 30, Payton discloses the system of claim 29, wherein said receiving processor is programmed to offer each consumer an extension of time before purging the media content (the examiner notes that items are added and deleted from storage according to a level of priority that is determined by user interaction with the item. Therefore, by interacting with a particular item more often, the period of time that the item is stored is extended.)(col. 8, l. 26-37).

Referring to claims 31 and 35, Payton discloses the system of claim 29, wherein said receiving processor is programmed for secured access to media content and to decrypt media content that is encrypted (col. 4, l. 64-66).

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Referring to claim 38, Payton discloses the system of claim 29, wherein the media content includes media content selected by one of the consumers (col. 6, l. 7-11).

Referring to claim 39, Payton discloses the system of claim 29, wherein said receiving processor and database are located proximate a visual display accessible by one of the consumers (col. 6, l. 20-23).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 12, 19, 26, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Payton in view of Eldering et al.

Referring to claims 5, 12, 19, 26, and 34, Payton discloses the systems of claims 3, 10, 15, 23, and 29, respectively. Payton does not disclose that the content usage includes an amount of time each consumer views the content. Eldering et al. discloses a system for characterizing subscribers, wherein the time duration of a user's viewing is monitored. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton to include monitoring a user's viewing time such as that taught by Eldering et al. in order to better provide subscribers with programming and advertising which will be of interest to them (col. 1, l. 64-66).

5. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Payton.

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Referring to claim 36, Payton discloses the system of claim 29. Payton further discloses a CD ROM writer 65, which writes a digital audio signal onto a blank CD ROM, which can then be played on a separate audio system. Payton does not disclose preventing unauthorized copying of the media content. The examiner takes Official Notice that preventing the copying of media data is well known within the prior art. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton to prevent copying of media data such as that taught by the prior art in order to ensure that media providers are properly compensated for distributing media.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Van Handel whose telephone number is 571-272-5968. The examiner can normally be reached on 8:00am-5:30pm Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MVH


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PRIMARY PATENT EXAMINER